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MAY - 5 2005	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: <u>MS</u>	DEPUTY

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
Plaintiff,

v.

KERR-MCGEE CHEMICAL, LLC,
Defendant.

Case No. CV-S-05-0548-HDM-1233
JOINT STIPULATION OF
SETTLEMENT AND ORDER
OF DISMISSAL

JOINT STIPULATION OF SETTLEMENT AND ORDER OF DISMISSAL

WHEREAS, Plaintiff, the United States of America ("United States"), by authority of the Attorney General of the United States and acting at the request of the Administrator of the Environmental Protection Agency ("EPA"), is concurrently, with the filing of this Joint Stipulation of Settlement and Order of Dismissal ("Stipulation"), filing a Complaint in the above-captioned civil action (the "Complaint") against Kerr-McGee Chemical, LLC ("Defendant" or "Kerr-McGee") pursuant to 42 U.S.C. §§ 7413(b) and 7503 of the Clean Air Act seeking penalties for alleged violations of the Clean Air Act and the Nevada State Implementation Plan ("SIP") at Defendant's facility in Henderson, Clark County, Nevada;

WHEREAS, Kerr-McGee denies the allegations of the Complaint and asserts that its actions that are the subject of the Complaint were in compliance with the Clean Air Act;

WHEREAS, the United States and Defendant ("the Parties") agree that settlement of this action without further expense and litigation is in the public interest and that entry of this Stipulation is the most appropriate means of resolving the instant matter;

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, or any determination of liability, and upon consent and agreement of the Parties, by their attorneys and authorized officials, to this Stipulation, it is hereby AGREED, STIPULATED, and ORDERED:

1. This Court has subject matter jurisdiction over this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345 and 1355(a). Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

2. Within 30 (thirty) calendar days after this Stipulation is entered by the Court, the Defendant shall pay \$55,392 (fifty-five thousand three hundred and ninety two dollars) to the United States.

3. Payment of the \$55,392 shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures to be provided to Defendant by the United States.

4. Any EFTs received by the United States after 11:00 a.m. (Pacific Time) will be credited on the next business day. On the day that the transfer is made, Defendant shall send evidence of the transfer along with correspondence referencing this Stipulation and the DOJ Case Number 90-5-2-1-07667 and referencing the case United States of America v. Kerr-McGee Chemical, LLC, and Case No. CV-S-

05-0548-HDM-RJJ to:

United States EPA	United States EPA
75 Hawthorne Street	75 Hawthorne Street
ORC-2	AIR-5
San Francisco, CA 94105	San Francisco, CA 94105
Attention: Kara Christenson	Attention: Charles Aldred

and to:

United States Attorney's Office
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
Attention: Financial Litigation Unit

1 and to:

2 Section Chief
3 Environment and Natural Resources Division
4 Environmental Enforcement Section
5 P.O. Box 7611
6 Washington, DC 20044

7 5. In the event that Defendant fails to pay the full amount of the payment required
8 by Paragraph 2 when due, upon motion by the United States, the Court shall enforce the
9 terms of this Stipulation, or upon motion by the United States, the dismissal shall be
10 vacated and the action against Defendant reinstated, or the United States may proceed to
11 enforce this Stipulation as a judgment as set forth in Paragraph 9 below.

12 6. If the payment required by Paragraph 2 is not paid within 30 (thirty) calendar
13 days after the Stipulation is entered by the Court, Defendant shall pay, without demand,
14 \$500.00 (five hundred dollars) per day, in stipulated penalties, for each day that the
15 payment required by Paragraph 2 is late. The United States, in its sole and unreviewable
16 discretion, may reduce or waive stipulated penalties otherwise due under this Stipulation.

17 7. If any payment or stipulated penalty payable under this Stipulation is not paid
18 when due, interest shall accrue on any amount overdue from the first day after the
19 payment or stipulated penalty is due through the date of payment in accordance with the
20 statutory judgment interest rate provided for in 28 U.S.C. § 1961.

21 8. Payment of stipulated penalties and interest shall be made by certified or
22 cashier's check in the amount due, payable to the U.S. Department of Justice, referencing
23 United States of America v. Kerr-McGee Chemical, LLC, DOJ Case Number 90-5-2-1-
24 07667, and Case No. CV-S-~~05-0548-HDM-RJJ~~ and delivered to:

1 United States Attorney's Office
2 333 Las Vegas Boulevard South, Suite 5000
3 Las Vegas, Nevada 89101
4 Attention: Financial Litigation Unit

5 9. This Stipulation shall constitute an enforceable judgment for purposes of post-
6 judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure,
7 the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable
8 authority. The United States shall be deemed a judgment creditor for purposes of
9 collection of any unpaid amounts of the civil and stipulated penalties and interest.
10 Further, Defendant shall be liable for attorneys' fees and costs incurred by the
11 United States to collect any amounts due under this Stipulation.

12 10. The provisions of the Stipulation shall apply to, be binding on and inure to
13 the benefit of the Parties to this action, and their successors and assigns. The undersigned
14 representative of the Defendant certifies that he or she is authorized to enter into the terms
15 and conditions of this Stipulation and to execute and legally bind such Party to this
16 document.

17 11. Within 5 (five) business days of receipt of the notice, pursuant to Paragraph 4,
18 that all amounts due under this Stipulation have been paid, the United States shall file
19 Notice with the Court that full payment has been received. At that time, the United
20 States' claims as alleged in the Complaint against Defendant shall be dismissed with
21 prejudice. Each Party shall bear its own costs and attorneys fees.

1 12. This Court shall retain jurisdiction for the purpose of interpreting and
2 enforcing this Stipulation.

3
4 AS AGREED AND STIPULATED TO BY THE PARTIES, IT IS SO ORDERED:


5
6 
7 UNITED STATES DISTRICT JUDGE

8 DATED: May 3, 2005
9


10
11 FOR THE UNITED STATES OF AMERICA:

12 We consent to the Joint Stipulation of Settlement and Order of Dismissal in United States
13 of America v. Kerr-McGee Chemical, LLC; Case No. CV-S-05-0548-HDM-RJJ

14
15 Dated: 4/25/05

16 
17 KELLY A. JOHNSON
18 Acting Assistant Attorney General
19 Environment and Natural Resources
20 Division
21 U.S. Department of Justice


22
23 Dated: 4/27/05

24 
25 CHRISTY L. KING
26 Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice

1 We consent to the Joint Stipulation of Settlement and Order of Dismissal in United States
2 of America v. Kerr-McGee Chemical, LLC; Case No. CV-S-05-0548-HDM-r211

3 DANIEL G. BOGDEN
4 United States Attorney
5 District of Nevada

6 Dated:


7 BLAINE T. WELSH
8 Assistant United States Attorney
9 District of Nevada
10 U.S. Department of Justice


11 Of Counsel:

12 KARA T. CHRISTENSON
13 Assistant Regional Counsel
14 Environmental Protection Agency
15 75 Hawthorne Street
16 San Francisco, CA 94105
17 Telephone: (415) 972-3881
18 Facsimile: (415) 947-3570
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26

1 FOR DEFENDANT KERR-MCGEE CHEMICAL, LLC:

2 I consent to the Joint Stipulation of Settlement and Order of Dismissal in United States of
3 America v. Kerr-McGee Chemical, LLC; Case No. CV-S-05-0548-NM-RJJ

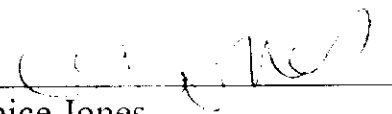
4
5 Dated:


MICHELE B. CORASH
Counsel for Kerr-McGee Chemical, LLC
Morrison & Foerster, LLP

CERTIFICATE OF SERVICE

I hereby certify that I directed that a coy of the Plaintiff Joint Stipulation of Settlement
and Order of Dismissal be served on May 29, 2005, by first-class mail upon:

MICHÈLE B. CORASH
Counsel for Kerr-McGee Chemical, LLC
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105



Eunice Jones
United States Attorney's Office
District of Nevada